

Testimony – House Bill 831

Senate Natural Resources and Energy Committee – Chairman Greg Lind
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Although we appreciate various changes that have been made to HB831, including the attempt to embrace the principle of adverse effect and the exemption of change applications, we rise in opposition to HB831.

HB831 goes far beyond addressing the Montana Supreme Court decision in *Trout Unlimited v. DNRC*. It creates unjustified regulatory requirements to get a permit to develop community water systems for residential and commercial development.

We believe that the real issue in front of the Legislature is how to address the *TU* decision. The issue is not whether ground water development from wells is adversely affecting prior appropriators.

HB831, like the other proposals we've seen this session that attempt to address the *TU* decision, is creating new regulatory requirements for community water systems without conducting thorough evaluations of stream flow data or ground water levels at a watershed or sub-watershed scale.

We believe that such evaluations are critical before proposing sweeping legislation that will affect all sectors of Montana, in particular the housing sector.

We would like to provide for the Committee an Executive Summary of the "Gallatin Valley Water Resources Evaluation" conducted on our behalf by Bozeman hydrologist Dr. Michael Nicklin. We would also like to submit for the record a full copy of the evaluation.

Dr. Nicklin's study focused primarily on the impact of ground water use from exempt wells. However, in also evaluating overall stream flow data from the Gallatin River over the last 70-plus years and ground water level data in the Gallatin Valley over the last 50-plus years, Dr. Nicklin came to two key conclusions:

1. Careful scrutiny of stream flow data from the 1930s to the 2000s demonstrated there was no trend for change in stream flow behavior over this lengthy period of time.

2. Ground water levels in the Gallatin Valley have not changed significantly since the 1950s.

We would also like to point out that Dr. Nicklin has not found that consumptive water use has increased in the Gallatin Valley with the growth of urban and rural subdivisions and their accompanying use of ground water. Dr. Nicklin states:

"In order for consumptive use to increase, there must be an increase in irrigated acreage compared to historically irrigated acreage. Most subdivisions have been placed in areas that had been irrigated historically."

Dr. Nicklin concluded:

"The amount of irrigated acreage in the Gallatin Valley may have actually decreased with time, especially in areas where rural subdivisions exist. A strong argument can be made that overall consumptive use of water in the Gallatin Valley is declining as a result of subdivision growth."

We realize that the water resources evaluation we have outlined for you is not the last word on ground water use from wells in Montana, but it does represent an important first step in evaluating Montana's ground water resource and determining how the use of that resource should proceed in the future.

We believe the evaluation strongly suggests that ground water development for new homeowners is not having a significant impact on watersheds or an adverse effect on senior appropriators.

For this very reason, the Montana Association of REALTORS® urges the Committee to:

1. Consider a much simpler solution to the *TU* decision;
2. Maintain and clarify the municipal exemption to the basin closure law; and
3. Study water use issues over the Interim and *then* consider a new regulatory framework for ground water use by wells.

At this point, beyond attempting to address the *TU* decision, we believe that there is no justification for the changes in Montana water use law found in HB831.

We urge a "do not pass" on HB831.